



REMUNERATION TRIBUNAL

Replacement Explanatory Statement: Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2022

1. The *Remuneration Tribunal Act 1973* (the Act) establishes the Remuneration Tribunal (the Tribunal) as an independent statutory authority responsible for reporting on and determining the remuneration, allowances and entitlements of key Commonwealth office holders. These include Judges of Federal Courts and most full-time and part-time holders of public offices, including Specified Statutory Offices. An additional function of the Tribunal is to determine a classification structure for Principal Executive Offices and the terms and conditions applicable to each classification within the structure.

Consultation

2. Section 11 of the Act advises that in the performance of its functions the Tribunal:
 - may inform itself in such manner as it thinks fit;
 - may receive written or oral statements;
 - is not required to conduct any proceeding in a formal manner; and
 - is not bound by the rules of evidence.
3. The Tribunal normally receives submissions on remuneration from a portfolio minister, or a secretary, program manager or employing body (in respect of a Principal Executive Office) with responsibility for the relevant office(s). The Tribunal will normally seek the views of the relevant portfolio minister prior to determining remuneration for an office.
4. The Tribunal may reach a decision based on the information provided in the submission and other publicly available information such as portfolio budget statements, annual reports, corporate plans, legislation and media releases. On occasion it may wish to meet with relevant parties or seek further information from the relevant minister or person making the submission.
5. Amongst other relevant matters in deliberating on appropriate remuneration for an office the Tribunal informs itself on:
 - the main functions, responsibilities and accountabilities of the office;
 - the organisational structure, budget and workforce;
 - the requisite characteristics, skills or qualifications required of the office holder(s); and
 - the remuneration of similar, comparator, offices within its jurisdiction.

Review of Remuneration for Holders of Public Office

6. The Tribunal's obligations, under sub-sections 7(3) and 8(1)(b) of the Act are to make determinations in respect of remuneration for various offices within its jurisdiction at periods of not more than one year. To meet these obligations, the Tribunal issued determinations on 15 June 2021 and at that time determined no adjustment to remuneration for all offices in its jurisdiction.
7. In complying with its obligations to make new determinations the Tribunal takes the opportunity to consider whether any general increase to remuneration for offices might be warranted. In conducting this review the Tribunal takes account of economic conditions in Australia, past and projected movements in remuneration in the public and private sectors (including the Australian Public Service), as well as the outcomes of reviews of public offices completed by the Tribunal. In order to inform its conclusions the Tribunal draws upon authoritative external sources such as the published material available from the Government, the Reserve Bank of Australia and the Australian Bureau of Statistics as well as trends in public and private sector remuneration. The Tribunal is also obliged by the Act to consider the Annual Wage Reviews of the Fair Work Commission. The Commission's 2021 decision was taken into account, as its 2022 decision was not available at the time the Tribunal concluded its deliberations.
8. The Tribunal did not receive any submissions on this matter.
9. On 13 June 2022 the Tribunal decided to determine a general adjustment of 2.75 per cent to remuneration for public offices in its jurisdiction with effect from 1 July 2022. A statement setting out the Tribunal's reasons for decision is available at www.remtribunal.gov.au.
10. *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2022* formalises the Tribunal's decision for Part-time Public Offices.
11. Consultation on this outcome was considered unnecessary given the matters considered by the Tribunal in making its decision.

Administrative Appeals Tribunal (former Migration Review Tribunal (MRT) Member) and Administrative Appeals Tribunal (former Refugee Review Tribunal (RRT) Member)

12. On 1 June 2022, the AAT wrote to the Tribunal's secretariat confirming it was appropriate to remove the offices of Administrative Appeals Tribunal (former MRT Member and former RRT Member) from the determination, as the transition period applying to these offices has expired.

Health and Hospitals Fund Advisory Board

13. On 19 May 2022, the Department of Health wrote to the Tribunal's secretariat, advising that the Health and Hospitals Fund Advisory Board no longer exists and could be removed from the Tribunal's determination.

Climate Change Authority, Chair and Member

14. On 1 June 2022, the Climate Change Authority wrote to the Tribunal's secretariat advising that no current office holder was appointed prior to 12 February 2018. As such, the transitional provisions associated with the offices of Chair and

Member of the Climate Change Authority could be removed from the Tribunal's determination.

Retrospectivity

15. Any retrospective application of this determination is in accordance with subsection 12(2) of the *Legislation Act 2003* as it does not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) to that person's disadvantage, nor does it impose any liability on such a person.

Exemption from sunseting

16. Under section 12, item 56 of the Legislation (Exemptions and Other Matters) Regulation 2015, an instrument required to be laid before the Parliament under subsection 7(7) of the *Remuneration Tribunal Act 1973* is exempt from the provisions of paragraph 54(2)(b) of the *Legislation Act 2003*.
17. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
18. As the Remuneration Tribunal makes new principal determinations annually, this principal determination is unlikely to have any practical effect beyond the usual 10 year sunseting period. As such, the exemption from sunseting will not have a practical impact on parliamentary oversight of the relevant measures.

The power to repeal, rescind and revoke, amend and vary

19. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Details of the determination are as follows:

PART 1 – PRELIMINARY

20. Part 1 specifies the authority for and the commencement date of the determination and supersedes the previous principal *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2021* (as amended) applying to the offices covered by this determination. This Part also contains definitions of certain words used in the determination.

PART 2 – GENERAL PROVISIONS

21. Part 2 sets the general provisions and other related matters. It implements the general adjustment described in paragraph 9 of this document to the fees listed in Table 2A.
22. The provisions of this Part remain otherwise unchanged from those contained in Part 2 of the previous determination.

PART 3 – ANNUAL FEES

23. Part 3 sets out the remuneration for offices on annual fees and other related matters (such as special provisions for certain offices) effective from 1 July 2022. It implements the general adjustment described in paragraph 9 of this document
24. The special provision associated with the Climate Change Authority has been removed, it no longer applies.
25. The provisions of this Part otherwise remain unchanged from those contained in Part 3 of the previous determination.

PART 4 – DAILY FEES

26. Part 4 sets out the remuneration for offices on daily fees, conditions of payment for the daily fees and other related matters for specific offices (such as special provisions for certain offices) effective from 1 July 2022. It implements the general adjustment described in paragraph 9 of this document.
27. The office of Administrative Appeals Tribunal (former Migration Review Tribunal (MRT) Member) has been removed from Table 4A.
28. The office of Administrative Appeals Tribunal (former Refugee Review Tribunal (RRT) Member) has been removed from Table 4A.
29. The Health and Hospitals Fund Advisory Board has been removed from Table 4A.
30. The special provision associated with the offices of Administrative Appeals Tribunal (former Migration Review Tribunal (MRT) Member) and Administrative Appeals Tribunal (former Refugee Review Tribunal (RRT) Member) has been removed from Table 4B.
31. The special provision associated with the Climate Change Authority has been removed from Table 4B.
32. The provisions of this Part otherwise remain unchanged from those contained in Part 4 of the previous determination.

PART 5 – ANNUAL MEETING FEES AND ADDITIONAL DAILY FEES

33. Part 5 sets out remuneration for offices on this fee structure, conditions of payment for the annual meeting and additional fees and other related matters for specific offices (such as special provisions for certain offices) effective from 1 July 2022. It implements the general adjustment described in paragraph 9 of this document.
34. The provisions of this Part remain unchanged from those contained in Part 5 of the previous determination.

PART 6 – BASE FEES AND MEETING FEES

35. Part 6 sets out the remuneration for offices on this fee structure, conditions of payment for the base fee and meeting fees and other related matters for specific offices (such as special provisions for certain offices) effective from 1 July 2022. It implements the general adjustment described in paragraph 9 of this document.

36. The offices of Chair and Member of the Climate Change Authority and their associated special provision have been removed from Tables 6A and 6B, respectively.
37. The provisions of this Part otherwise remain unchanged from those contained in Part 6 of the previous determination.

PART 7 – ABORIGINAL LAND COUNCILS FEES

38. Part 7 sets out the conditions of payment for fees to the Aboriginal Land Councils and other related matters (such as special provisions for certain offices) effective from 1 July 2022. It implements the general adjustment described in paragraph 9 of this document.
39. The provisions of this Part remain unchanged from those contained in Part 7 of the previous determination.

SCHEDULE 1 – REPEALS

40. Schedule 1 specifies instruments which have been amended or repealed.

Authority: Sub-sections 7(3) and 7(4)
Remuneration Tribunal Act 1973

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2022

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview of the Legislative Instrument

The legislative instrument, or determination, formalises the Tribunal's review decision to determine an adjustment of 2.75 per cent to remuneration for Part-time Public Offices from 1 July 2022.

The determination supersedes the previous *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2021* (as amended).

The decision follows a review of remuneration (and significantly related matters) carried out by the Tribunal consistent with sub-section 7(3) of the *Remuneration Tribunal Act 1973*.

In addition to formalising the Tribunal's review decision, the determination:

- removes the Health and Hospitals Advisory Board as it no longer exists;
- removes the offices and associated special provisions of Administrative Appeals Tribunal (former Migration Review Tribunal (MRT) Member) and Administrative Appeals Tribunal (former Refugee Review Tribunal (RRT) Member) as the transition period applying to these offices has expired;
- removes the offices of the Climate Change Authority from Part 6 as no current office holder was appointed prior to 12 February 2018;
- removes special provisions associated with the Climate Change Authority which no longer apply.

The instrument maintains the principle of fair, and current, remuneration for work performed.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Remuneration Tribunal